Supreme Court, U.S.
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JOHN F. DAVIS, CLERK

No. 958

In the

Supreme Court of the United States

OCTOBER TERM, 1963

PAUL REVERE LIFE INSURANCE COMPANY,
Petitioner,

v.

FIRST NATIONAL BANK IN DALLAS, ADMINISTRATOR OF THE ESTATE OF LOY THOMAS BROWN,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

SUPPLEMENT TO PETITION FOR REHEARING

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SUPPLEMENT TO PETITION FOR REHEARING

Petitioner has just learned that the declaratory judgment action filed in the state court in San Antonio in the companion pilot-passenger case in which the Fifth Circuit "abstained" from rendering decision by the opinion below—United Services Life Ins. Co. v. Delaney, Cause No. 19531 (328 F. 2d 483)—*was dismissed by the trial judge on May 27, 1964.*

The state court in the *Delaney* case—while apprised of the fact that petition for certiorari had been denied by this Court in the present appeal on May 18, 1964—ruled that it had no jurisdiction to render declaratory judgment

on the issue of state law in question because of the pendency before the Fifth Circuit of an action at law involving precisely the same parties and issues as the declaratory judgment suit before it.

The parties in the *Delaney* case are now confronted with further substantial costs and delay in maintaining appeals through the two separate tiers of Texas appellate courts in order to attempt to force the trial judge to render decision in the declaratory judgment action filed at the instance of the Fifth Circuit. Yet, as pointed out in the Petition for Certiorari (p. 15, fn. 13), any such appeal may well prove to be fruitless because of the distinct possibility that the Texas Supreme Court—which has obvious interests in the return to it of "difficult" questions of state law in diversity cases via the abstention of the Fifth Circuit and of the federal district courts in Texas under the opinion rendered below—will affirm the action of the trial court in the *Delaney* case in the absence of some definitive ruling by this Court as to whether the long-standing principles of *Meredith v. Winter Haven* are now to be disregarded.

Thus, the waste, injustice and inequity resultant from "abstention" compound themselves, as the parties are forced to continue to litigate collateral procedural questions in at-

Mr. Bond Davis, Esq., of San Antonio, the attorney for United Services Life in the *Delaney* case, advised Jerry L. Buchmeyer, one of the attorneys for the Petitioner herein, by phone on May 27, 1964, that the trial judge—Judge Loughridge, 37th Judicial District Court—had just rendered this order of dismissal on the morning of May 27, 1964, and had instructed Mr. Davis to prepare an appropriate written order of dismissal for entry. In view of the obvious time factor because of the pending Petition for Rehearing, it was not possible for Petitioner to wait for and obtain a certified copy of this order of dismissal of the *Delaney* case to present with this Supplement to Petition for Rehearing.

tempting to have the merits of the controversy resolved by some court. This, indeed, is but symptomatic of the confusion and uncertainty regarding the proprieties of abstention in diversity cases which now exist and which will, as discussed in the Petition for Rehearing of Order Denying Certiorari, continue for a very substantial period of time unless this Court grants the petition for certiorari previously filed herein.

Respectfully submitted,

WILLIAM D. NEARY,
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Dallas 1, Texas,
Attorney for Petitioner.

Of Counsel:
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JERRY L. BUCHMEYER,
THOMPSON, KNIGHT, WRIGHT & SIMMONS,
All of Dallas, Texas.
ORVILLE F. GRAHAME,
Worcester, Massachusetts.

CERTIFICATE OF COUNSEL

Pursuant to Rule 58, I hereby certify that the foregoing Supplement to Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of Rule 58.

JERRY L. BUCHMEYER

PROOF OF SERVICE

COUNTY OF DALLAS }
STATE OF TEXAS }

BEFORE ME, the undersigned Notary Public in and for Dallas County, Texas, on this day personally appeared Jerry L. Buchmeyer, who being by me duly sworn upon oath stated: I, Jerry L. Buchmeyer, am not a member of the bar of Supreme Court of United States; but I am a duly licensed and practicing attorney and a member of the State Bar of Texas and have been one of the attorneys of record for petitioner herein in all proceedings had in the courts below.

I further state upon oath that upon the ~~22nd~~ 23rd day of May, 1964, I served copies of the foregoing Supplement to Petition for Rehearing on the Respondent, First National Bank in Dallas, Administrator of the Estate of Loy Thomas Brown and the heirs of Loy Thomas Brown, Mrs. Lorraine Brown and Sharon Brown, by depositing the same in a United States post office or mail box, with first class postage prepaid, addressed to the following counsel of record in this court at their respective addresses, to, to-wit: Messrs. Robert A. Fanning, Fidelity Union Tower Building, Dallas, Texas; John H. McElhaney, 2400 Republic National Bank Building, Dallas, Texas; and Donald A. Gilley, Fidelity Union Tower Building, Dallas, Texas.

Jerry L. Buchmeyer

Sworn to and subscribed before me by the said JERRY L. BUCHMEYER, this the ~~22nd~~ 23rd day of May, 1964.

Bobbi C. Wright

Notary Public in and for
Dallas County, Texas